



August 2, 2002

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2002-4243

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166829.

The El Paso Police Department (the “department”) received a written request for reports of “any incendents [sic] filed against myself.” You have submitted to this office as responsive to the request three complaint reports. You state that the department has released to the requestor most of the information contained in two of the reports, which you submitted to this office as Exhibits B and C, and some of the information contained in the third report, submitted as Exhibit D. You contend that the information the department withheld from Exhibits B, C, and D is excepted from required public disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because it is presumed that the release of such information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You state that the complaint report submitted as Exhibit D relates to a pending criminal investigation and that this case “was presented to the

District Attorney's Office for their review and consideration regarding the filing of charges and the case is still pending in the District Attorney's Office." Based on your representation, we conclude that the department may withhold most of Exhibit D pursuant to section 552.108(a)(1) of the Government Code.

Section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). In most instances, the identity of the complainant must be released to the public as "basic information." See *Houston Chronicle*, 531 S.W.2d at 187 (making public, among other things, "the identification and description of the complainant"). However, citing Open Records Decision No. 628 (1994) as authority, you contend that the "basic information" that identifies the complainant in Exhibit D, as well as the complainant identifying information contained in Exhibits B and C, is excepted from public disclosure under section 552.108.

In Open Records Decision No. 628, this office concluded that in certain circumstances, the identity of the complainant in an offense report may be withheld from the public pursuant to section 552.108 where there is evidence that the release of the complainant's identity would result in harassment or retaliation. In this instance, however, the criminal suspect apparently already knows most of the identifying information of the complainant, including her name, home address, work address, and work telephone number. We therefore conclude that releasing the identifying information at this point would not subject the complaint to any further degree of harassment or intimidation than existed before the release of the information.

For similar reasons, we conclude that the department may not withhold the highlighted information on privacy grounds in conjunction with section 552.101 of the Government Code.<sup>1</sup> Although this office determined that in "special circumstances" an individual's identity must be withheld from the public on privacy grounds where there exists "an imminent threat of physical danger," Open Records Decision No. 169 at 6 (1977), we conclude that you have not demonstrated that "special circumstances" exist in this instance. Accordingly, the department must release to the requestor the identifying information you have highlighted.

In summary, the department may withhold most of the information contained in Exhibit D pursuant to section 552.108(a)(1) of the Government Code. However, the department must release the "basic information" contained in Exhibit D as well as all of Exhibits B and C.

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law and constitutional rights to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 678, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Nathan E. Bowden".

Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/RWP/sdk

Ref: ID# 166829

Enc: Submitted documents

c: Mr. Joseph Robert Harrell  
7049 El Cajon Drive  
El Paso, Texas 79912  
(w/o enclosures)